THE SPEECH OF THE LATE Lord Biſhop of ROCHESTER.

In His own Defence, as he delivered it at the Bar of the Houſe of Lords.

My LORDS.

I Have been under a very long and cloſe Confinement, and have been treated with ſuch Severity, and ſo great Indignity, as I believe no Priſoner in the Tower of my Age and Function and Rank, ever was. By which Means, what Strength and Uſe of my Limbs I had when I was firſt committed in *Auguſt* laſt, is now ſo far declined, that I am very unfit to make my Defence againſt a Bill of ſuch an extraordinary Nature.

The great Weakneſs of Body and Mind under which I labour, ſuch Uſuage, ſuch Hardſhips, ſuch Inſults as I have undergone, might have broken a more reſolute Spirit and much ſtronger Conſtitution than falls to my Share.

Your Lordſhips were pleaſed to permit me to appear before the Houſe of Commons, if I thought fit, leſt my Silence ſhould be turn'd to my Diſadvantage, as, in fact, the Council for the Bill have done their utmoſt towards it.

I ſhould not have thought to decline any Occaſion of juſtifying my ſelf; but I crave leave to tell your Lordſhips ſome Reaſons why I did not appear there, and make uſe of the leave your Lordſhips gave me.

After ſeven Months of cloſe Impriſonment, I was not a little ſurprized when I heard, that on the 11th of March, by the Houſe of Commons, it was thus reſolved, *That it appears to this Houſe, that* Francis *Lord Biſhop of* Rocheſter, *was principally concerned in forming directing and carrying on a deteſtable Conſpiracy*, &c.

Upon duly weighing which Reſolution, and the Copy of the Bill, I found not any thing charged in the Bill, but what was contained and previouſly reſolved in this Vote; and therefore whatſoever ſhould have been on my behalf to that Houſe would have been an Expreſs Contradiction to it. And what Hopes I could have of Succeſs in ſuch an Attempt, I need not ſay; what they ſent me was the Preamble of the Bill only, which they could not alter, conſiſtent with what they had reſolved.

The Bill itſelf was to inflict Pains and Penalties, which followed; but there was no room to object againſt any of thoſe which they had not then declared; they have ſince been added, and ſent up to Your Lordſhips in like manner, without any Oath made, or any criminal Act proved againſt me by any living Witneſs. And is a Perſon, thus ſentenced below, to be Deprived of all his Preferments, and his very Function, & to be a perpetual Exile, and to be render'd incapable of any Office and Employment? To be one whom no Man muſt Correſpond with by Letters, Meſſages, or otherwiſe? And, my Lords, one who is a Biſhop of the Church of *England* and a Lord of Parliament?

It is the firſt Inſtance wherein a Member of this Houſe hath ſo treated and prejudged, and (as I have once before ſaid to Your Lordſhips) I pray GOD it may be the laſt, and *that ſuch Precedents in this Kingdom may not be multiplied in After-Times.*

My Counſel have amply done their part, by arguing the Points of Law, by explaining and enforcing the Evidence, & ſhew the little Colour, Appearance, and Shadow of Proofs againſt me, (permit me to call them ſo) by anſwering what hath been offered againſt me. and by ſetting out the Conſequence which ſuch a Bill, founded and carryed on in ſuch a manner, & which enacts ſuch ſevere Penalties, muſt & will attend with.

Yet it becomes me to ſay ſomething for my ſelf, leſt my Silence be conſtrued Conſciouſneſs of Guilt, or, at leaſt, an Unwillingneſs to enter into Matters of ſo dark & perplexed, ſo nice & tender a Nature, as if I was not able, or did not care to clear and explain my ſelf, & rather choſe to leave it to the Management of others: I thank GOD I am under no ſuch Reſtraint, and can ſpeak to your Lordſhips on this Subject with great Freedom and Plainneſs.

But before I proceed, I beg Leave that I may repreſent to your Lordſhips ſome particular Hardſhips under which I have laboured:

The 1ſt is reading Extracts of anonymous Letters, without ſuffering any other Parts of the ſame Letters tho' relating to the ſame Subject, to be read. —Another is—Excuſing the Decypherers from anſwering Queſtions asked by me, and which I thought neceſſary for my Defence, leſt they ſhould reveal their Art.—The next is, not ſuffering me to be anſwered by the Clerks of the Poſt-Office, leſt the Secrets of that Office ſhould be Diſcovered. Another was, not ſuffering a Perſon, who had been at leaſt ten Years out of the Secretary's Office, to anſwer any Queſtions which came to his Knowledge by being ſome Years in that Office.

Another is, reading Examinations neither Dated, Signed, nor Sworn to.

Another is, reading Letters ſuppoſed to be Criminal, writ in another Man's Hand, and ſuppoſed to be Dictated by me, without offering any Proof, that I either Dictated them, or was Privy to them.

Another is, not allowing me Copies of the Decypher'd Letters, tho' petitioned for, till the Tryal was ſo far advanced, & I ſo employed and weakened by it, that I had not ſufficient time to conſider them.

Another is, not allowing me to read out of the Collection of Papers before the Houſe any part of them, in order to Diſcharge my ſelf, but what hath been read by Clerks. And all this in a Proceeding where the Council for the Bill profeſs they have no legal Evidence, and that they are not to be confined to the Rules of any Court of Law or Equity, tho' as often as it is for their Service, they conſtantly ſhelter themſelves under it.

My Lords, theſe are the Hardſhips which I previouſly mention, and humbly lay before Your Lordſhips.

By Your Lordſhip's Leave, I proceed now to make that Defence, as well as I am able to make it in the Condition of Health I am now in, humbly praying your Lordſhips, if I find my ſelf in any degree ſinking under it, that you will indulge me, and allow me a little time to go on.

The general Charge of the Bill is, That I have been deeply concerned in forming, directing, and carrying on a wicked & deteſtable Conſtriracy, and was a principal Actor therein.

The Charge is divided into two Heads:

Firſt, That I traiterouſly conſulted and correſponded with divers Perſons to raiſe an Inſurrection, &c. in this Kingdom, to procure Foreign Forces to invade it &c.

Secondly, that I traiterouſly correſponded with the ſame intent with Perſons employed, &c. But neither part of this Charge hath been made good by the Council for the Bill, nor have they proved, nor attempted to prove me at one Conſultation; Nor is there any thing tends towards ſuch a Proof, except the exploded Story of the *Burford-Club*, and 2 or 3 hearſay Informations, which were mentioned of my Lord *Strafford*, Lord *North* and *Grey*, Lord *Orrery*, and Sir *Henry Goring*, ſaid to be concerned in the Management of this Affair. I have met all theſe Lords I own it, but at different Times; and upon the beſt Recollection I can make I never was in all my life with any 3 of them at once, unleſs perhaps about ſome general Matters Degending in Parliament. The Earl of *Strafford* hath viſited me, and I have, when in health, dined with him once at his Houſe. At Lord *North*'s Table I have not eat: Tho' I have great Honour for him, yet I never had any Intimacy with him, eſpecially ſince the Affair of the Dormitory, wherein he appeared ſo againſt me, that I certainly had loſt the Cauſe, had not his Affairs called him to *Holland*.

Lawſon hath Sworn, that this Lord did often viſit me at *Bromely*, but in truth he never was there above twice or thrice in all his Life-time.

I have not been once theſe two Years with Lord *Orrery* on any Buſineſs whatſoever; we twice Dined together at the Houſe of a Perſon, whoſe Name if I ſhould mention, your Lordſhips would not think there was any harm at all in dining there. Sir *Henry Goring* I never ſaw in all my Life, till he ſaw me at St. *James*'s, and he was but once at *Bromely*; and the Occaſion of his coming to me, was his placing four Sons at Weſtminſter School, and intending to breed up ſome of them to the Goſpel: The laſt time I ſaw Sir Henry Goring, was about 12 Months ago, when I promiſed to bring down one of his Sons to be upon that Foundation, and I ſhall be ſorry if I can't be as good as my Word.

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Your Lordships will excuse me for being so particular, when you consider how dangerous the Charge is, and how fit it is to clear the Persons charged, from such mischievous Correspondence; especially since it is with these and these only, that I have been speaking of, and it is insinuated that I have held Consultations with, to forward the Conspiracy.

The first is an Intent, and indeed a Conspiracy without a Consultation. But how hath that too been made good? Your Lordships will observe, that there is not one Overt-Act, or Circumstance of Time or Place, mentioned, proved, or alledged. I have not therefore consulted or conspired at home.

The next, and the only material Part of the Charge, is corresponding abroad with the Pretender, &c.

A high and heinous Accusation, strongly asserted, much insisted upon, but how maintained, is the Question?

The true State of this part of my Charge, as well and as fully as I can recollect is this, (I will not in any degree dissemble before you:) First, That I did the 20th of April, 1722: dictate 3 Letters to Mr: Dillon, the late Lord Mar, and to the Pretender himself under the feigned Names of Chivers, Musgrave, and Jackson; to which Letters the Names of Jones, Illington, and 1378, were, by my Direction, subscribed.

Secondly, That afterwards two Letters in answer to these two sent to *Mar* and *Dillon*, one dated *May* 11th, and the other *July* the 25th, under the feigned Names of *Motfield* and *Digby*, were intercepted.

Thirdly, That there is intercepted Correspondence between the *Pretender's* Agents abroad and *Kelly* here, carry'd on by him, and that I was at the Head of it, and am answerable for what it contains.

This is the Substance of my Charge, all other particular Circumstances are made use of, as they thought would give Light and Strength to one or other of those Articles.

As to the first of these Points *that I did dictate these Letters*; That it could not be possible that I dictated these Letters, hath been made out to your Lordships by such a Concurrence of Evidence, so clear, so full, and legal, as I perswade my self can have left no Doubt remaining upon any candid and indifferent Person; a plain Matter of Fact, supported by such Testimony, cannot be overthrown by little Guesses and consequential Surmises.

My Lords, I was under the known Difficulty of proving a Negative, which in many Cases is not to be done; but it so happens in this Case, that peculiar Circumstances attend it as to the Point of Time. My being disabled in my Chamber, and attended before and after that time by some of my Servants, & receiving frequent Messages from others: The agreeing Testimony of my Servants, that no Stranger came near me about that time, and for some time before and after, and the full Evidence of the School at *Westminster*, hath enabled my several Servants to recollect the Time, and to furnish such a Proof of my Innocence in this Matter, as is not to be mistaken; and shews the Clearness of the Impossibility of it.

The Clerks of the Post-Office swear they believe these three Letters to have been in the Hand-writing of Mr. *Kelly*, my supposed Amanuensis: Your Lordships will remember, that their Oaths were at four Months distance from the time of seeing those Letters; during the whole Series of which time, it never hath appeared that they have compared one Original with another, and the only Original, as a Spicimen, hath been proved, at your Lordships Bar, not to be the Hand-writing of Mr. *Kelly*; and be pleased to remember, the very Supposition of Mr. *Kelly's* being my Secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, Who then writ these Letters, and with what View were they writ? The Answer to this is obvious: My being here at your Lordships Bar sufficiently explains it. It is enough to prove that I did not write or dictate them, and I proved it abundantly. Let but any numentous Part of the Charge against me be made out with half the Evidence, and I will submit without any Dispute. Eight or Nine such Witnesses would have born down the Evidence of one or two that had Sworn: But where there is none on the one Side, but all on the other Side who appear, and that give direct positive Evidence, can your Lordships deliberate a moment for the Reason of giving your Judgment, which in doubtful Cases, ought always, to lean to the doubtful Side? And so taking this Point as it stands, there is an End of the whole Matter, for all other Insinuations, feigned Names, and obscure Passages in Letters depending upon this, must fall together.

As to the other Part of the Accusation, when it is said the Letter of *Jackson* was a Letter to the *Pretender*, I have nothing to do with it; he that writ the Letter, when known, will best be able, and most concern'd, to disprove it.

Since this Objection carries a very odd Sound, I shall briefly shew your Lordships how that stands; *Jackson*, in a Cypher of *Plunkett's*, is said to denote the *Pretender*; That Cypher consists of one hundred and fifty Names, of which not one is used in any of the Letters attributed to Mr. *Kelly*; Three or four of these Names are used by Persons supposed to have writ to Mr. *Kelly* from Abroad, but not one of them is used by him; nor doth *Jackson* ever, in his part of the Correspondence, stand for the *Pretender*, but his always under other Appellations. Nay, *Plunket* himself, in all his Letters writ in decyphered Names, never stiles the Pretender *Jackson*, but either *Joseph* or *Jepson* — Why should a Name, used in *Kelly's* Correspondence, be explained by *Plunket's* Cypher, when *Kelly* appears to be no ways acquainted with him and *Plunket* himself did never dictate to him? I forbear Reception; I only add, that at this Rate, there is nothing that may not be proved.

The Letter to *Dubois* there is little said of, because there is no use made of it; it is charged in the Report as a Letter which I had received from abroad. The Tables are now turned, and I my self designed to have sent this Letter to a feigned Correspondent, but keep it among my Papers under my Seal: For what end? the Letter it self is an errant Delusion; Why, to furnish Proof, which is much wanted, of my receiving Letters that were directed *Jones* and *Illington*; and it is very strange that I, who am represented as being so very cautious, should be so negligent in this, and preserve something that is of no use, and yet might hurt me so much, when discover'd.

It is absurd to think, that I should by that means mention the Name of my Correspondent, and mentioned the Name of *Johnson*, which the Committee of the Lower House, observe was constantly with me.

I know not what farther can be said for this Matter, till the Council have further explain'd it, and shew'd what use they make of this Letter, which hath given your Lordships so much Trouble, and which I own I do not comprehend.

There is still a fifth Letter, which I have acknowledg'd to be my Hand; that which was taken on my Servant. Mr. *Reeves* hath made some uncharitable Observations upon it, which, for ought I know, may be allow'd as the Form of Law in the Ordinary Courts; but, I am sure, in a Court of Equity, the most favourable Construction ought to take Place. I have taken Minutes of his Observations, and I think they are these: He observes that the Bishop doth not in his Letter insist on his Innocence in general, but considers only what Evidence doth affected him.

It comes out, at last, for whom my Letter was designed, and I think that an Answer to Mr. *Reeves's* first Observation, and I shall explain it no further. He observes next, tho' I clear my self from the Knowledge of *Layer*, *Neynoe*, &c. there I say nothing of *Kelly*.

The Gentleman I designed the Letter for, knows it was in answer to one wrote to me about *Layer*, and will swear it himself, if there was room for it.

The third Observation is, where speaking of my self, I say, *If I cannot ward the Blow, I must be a Prisoner some Years without Remedy*; from which he is pleas'd to infer, not in that good-natur'd way he generally did, my meaning must be, that I was conscious of Guilt.

I apprehended an Impeachment would have been lodged and never prosecuted, as in the Case of my Lord *Danby* and the Earl of *Oxford*, and then I should have lain without Tryal, and without Bread.

The second Article of my Charge, is the two Letters from *Mar* and *Dillon*, under the feigned Names of *Motfield* and *Digby*, which were intercepted.

One of these they have drop't.

That I received them, is not pretended; both Letters, tho' without a criminal Expression or Word of Business in either of them, would yet have affected me in some degree, if received by me, and I was the Person as is supposed to have writ the Letters to which they are Answers. That I used to have any Correspondence, is that proved? Is not one and the same necessary in order to ascertain the Charge?

Any Man that pleases may write to me, and take those Names upon him; I am not to answer for that, unless I have appeared to receive them, and kept up the Correspondence.

The Letters from *Motfield*, dated 11 *May*, cannot be reasonably thought to have been wrote with any other View than that of being intercepted, & of fixing upon me the Letter of *April* 20th.

This Letter is committed to the common Post-Office, and sent upon this Errand; one may doubt who writ it, but one cannot doubt with what Design it was writ: Your Lordships Wisdom will see thro' those malicious Disguises, and not make me account for Letters which have been banded to and fro between unknown Correspondents, on a Design to raise a Suspicion of a third Person, altogether a Stranger to what is writ. And here I desire that the Observation made by one of my *Counsel* may not be forgot; that is, all the interpreted Letters from abroad, mention Persons that lay hid under secret Names, and are discover'd by doing of such Deeds, and by such Circumstances as will fasten those Names upon them: Tho' the Committee were not at a Guess, yet they were often at a Loss.

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In my Case the fictitious Names applied to me are often attended with such Discriptions and Circumstances, as very naturally lead those that offer those Letters to fix them on me; the Writers of them use all their Art not to disguise, but to open the thing, and seem to be in pain lest they should not be well enough understood.

This being contrary to the Method of Reserves in all other Cases, smells strong of a Malicious Design.

The Letter of *July* 25th, from *Digby* to *Weston*, is not well contrived as it should have been; yet I am to be understood by it, because of the Circumstances I was then under, which the Writer was apprised of.

These are the only two Instances of Letters supposed to be writ from abroad: They are not consistent: Shall they affect me in so high a manner?

It remains to be considered in the third place, whether there was a supported Correspondence between the Pretender and his Agents and Mr. *Kelly*? here Whether I was at the Head of it, and am justly to answer for it? Mr. *Kelly*, I hear, hath owned at your Bar, and declared, which I also declare, I never knew a Line of any Letter he writ to Foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Present of the Dog, the Account of that is in a Letter to *Hatfield*, dated *May* 5. not signed; in which are these Words, *The little Dog was sent ten Days ago, and ordered to be delivered to you*: but there is no Intimation in this, or any other *Letter* from abroad, that this Present was intended for me.

In two Letters from hence, by whom writ it doth not appear, some body is meant under the different Names of Mr. *Jones* and Mr. *Illington*, in such manner as designed for the same Person; but the Circumstances are neither applicable to my self or my Wife, or me particularly. The Letter dated *May* 7th, from *Hatfield to Musgrave*, being five Days after the Burial of my Wife, cannot mean her; and being but five Days after, it can as little mean me: So that the Writer of this Letter must either have known nothing of my Family Affairs, or if he did, must dissemble his Knowledge of them, to raise a suspicion, & in either Case what he says is not to be regarded. The Surgeon & Mr. *Kelly* only knew any thing of this matter, and they can best clear it.

Mrs. *Barnes*, she varies, & sometimes the Dog is for me, and sometimes for her.

As for my self, I never asked for, receiv'd, or saw this Present, nor know any thing of it, but from common Fame; nor have I, to this day, had any Message or Letter whatsoever concerning it. The End of this Design seems to be, to point me out by the Name of *Jones* & *Illington*, subscribed to the Letters of April 20th, by using them again in relation to this Present.

And perhaps they are not much in the wrong to think, that *One intercepted Dog* shou'd be of as much use as *Ten intercepted Letters*: Both Contrivances then must have succeeded, had I not been able to prove that those Letters were not writ with my Order or Knowledge; and therefore the Use of those Names, in subsequent *Letters*, is a Continuance of the Fraud, and this obviously runs through the whole of the Correspondence; For wherever the Names of *Jones* & *Illington* are, they are used in applying them to me, because they are the same.

These Points have not only been deny'd, but disprov'd with all Manner of Credence and Clearness.

My Council have shew'd that all these suspicious *Correspondencies* are to the last *Degree* absurd to apply to me, & no one would apply them: That I could not order the *Letters* of the 20th of *April*, to which the Names of *Jones*, &c. are subscrib'd, I think is plain, and then the Evidence falls or depends upon it.

As to the Journeys to and from Bromley, *where the Prisoner* KELLY *had frequent Access to me, and therefore I might probably dictate those Letters, the Council for the Bill have not open'd themselves on that Head; but your Lordships have heard it made out, and because it is material I shall repeat it.*

(Here *Wood's* Examination was read.)

By all these Accounts, nothing could have been easier for the Persons themselves to manage here, than getting an Account of my Neighbours in order to render the Contrivance more plausible.

That Mr. *Kelly* is no Stranger to me I own, but that he is in any Degree intimate with me, or frquently saw me, I deny; and what Evidence is there from them to the contrary; or how is this solemn Denial at your Bar contradicted?

The Chairman says, He carry'd him twice or thrice to the Deanry three or four Years ago; and this *Brown*, the Chairman, he swears, he carried me once in three or four Years Time. I belive he may. The Porter he says, That he brought a Letter and some Stockings from *Kelly* to me. The Foundation of this Story is true, for Mr. *Kelly* used to furnish me with *Beaver* Stockings and Gloves; not but that the Circumstance of the Porter coming up to my Bed-chamber at that dirty Time of the Year, is very extraordinary; and even this Evidence owns, he was never sent by me to him.

Now, on the other Side, there is the Evidence of almost all my Servants, who have, upon Oath, attested, that they do not know either the Name, or the Face of Mr. *Kelly*, which could not possibly be, did he use frequently to resort to me. Such a slight Aquaintance as I had with him, could not be any Temptation to enter into Secrets with him of such a dangerous Consequence as these are, which the Report insinuate, to have pass'd between us. However, Suspicion is not now the Business. They that prove somethings may be allow'd to suppose more; they that prove nothing, have no Right to indulge their Suspicions and Conjectures to the Ruin of any Man: Twenty Probabilities, allow'd to be such, are not equal to any one Matter of Fact well attested; it may strenthen the Fact, but cannot support it. They cannot be Evidence themselves, because one Probability may be set against another.

I use this Distinction between Evidence in Law, and reasonable Evidence, bacause the Council for the Bill have asserted something like it.

I own I always thought the Publick Law of the State, the Publick Reason of the State, and whatever it is in another Country, yet in this Country, no Evidence can be reasonable that is not legal; But I ask, What Sort of Evidence, either in Reason or Law, is brought against me? How am I prov'd to consult and correspond, to raise an Insurrection against his Majesty and his Kingdom, and to procure a foreign Force to invade the same in Favour of the Pretender?

How am I prov'd, in the second place, to have corresponded with the same Pretender, and with Persons employ'd by him? Is one Article of these Charges made out against me with any Colour of Reason? Suppositions without Proof, Suppositions disprov'd, and shew'd to be vain, and unjust.

If the proof in these Cases wants Strength, can the Hearsay of *Neynoe* supply the want of Proof, and render it valid, since *Neynoe* pretends, for ought that appears, not to have known any thing of me; he only heard *Kelly* say so, and Mr. *Kelly* denies it; and there is, I think, no Reason why such a dead Evidence shou'd affect me, or *Kelly* himself, much less me through him. Was *Neynoe* alive, and *Kelly* dead, and incapable of contradicting what *Neynoe* said, I believe what *Neynoe* said would not be of any Weight; besides, what *Neynoe* dead says and *Kelly* now alive denies, ought not to have any Force.

Concerning Hearsay Evidence in General and concerning the due Regard to it, I humbly desire your Lordships, that a Passage may be read out of Sir *John Fenwick's* Bill of Attainder.

(The whole Preamble read.)

My Lords, I humbly desir'd to have this read, because I thought it would take away a Distinction between legal and Parliamentary Evidence; that what was not legal might be Parliamentary. I believe here is a Condemnation of him by parliament; therefore, I think, the Codemnation of him must be by Parliamentary Evidence, It is recited in this Act as one of the Inducements that mov'd the King, Lords, and Commons to pass that Act, That Sir *John Fenwick* had contriv'd and fram'd several Papers, *&c.* only by Hearsay.

Shall that be accepted in this Parliament for Evidence, which is declar'd the only Motive of attaining a Man in another? If it was Judg'd hard in Sir *John Fenwick's* Case to charge a Man by Hearsay, can the being thus charg'd be any Proof against me? Sure the House of Commons in *96*, that brought that in, would have so thought, nor would those of your Lordships consented here, or elsewhere, to have pass'd it.

As for those that did not consent, I will venture to say, I am exceedingly puzzled to know why they did not oppose Sir *John Fenwick*, but favour'd his Case, and are yet against me. Is the Guilt objected to me, if prov'd, in any Measure like his? Or is there any Comparison between the Proof against him and me?

As to the Paper and Infomation given in by *Neynoe*, and painted in the Appendix, it is plain he was drawn into to have sworn backward or forward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council, that gave me Notice of my being taken up some Days before it happen'd. He knew what Use and Purpose the Protests of your Lordships were cheifly design'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positive Account, and design'd either to ask or receive such a Sum of Money.

'Tis said he was the late Earl of *Marishal's* Bedfellow for several Months, and had drawn up Heads for Memorials to be delivered to the Regent; but he had kept no Copies of these Heads, or foul Draughts which would have shewn whether they were given in to promote it, or discover it; in either case the Evidence of being then employ'd, would have been of Service; but they have not been able to produce a Line of such Heads or Memorials, yet the Report of the House of Commons upon the Basis of their Memorials, build the whole Fabrick

He knew that I went under the Names of *Jones & Illington*, and undoubtedly, he knew Mr *Dubois*: If the Scheme of Writing that Letter my self had been seen, he woule have found out a Reason for the Correspondence; and 500 l. would have made him affirm, That he carry'd the Letter himself. He knew the Pretender's particular Opinion of me, or of any Body else, and that he rely'd on Advices from me: How did he know that? He told him so. Who told him? It is not suppos'd Mr *Kelly* had it from himself, but from Persons of high Estate, and that were near the Pretedner.

Let me speak, my Lords, as always I hope I shall, with that Modesty as becomes Justice, but yet with Freedom, to you.

Hath nothing been open'd to you concerning this Man's Character, and his secret Transactions? Is it possible to believe this Pretender to Secresy, could have had, or shall he still have any Degree of weight, that threw away his life, rather than venture to stand to the Truth of what he said before his Death, and then he could have been contradicted, or Pangs of Conscience might have made him unsay what he had said? But a dead Man can retract nothing, what he hath writ, he hath writ; The Accusation must stand Just as it did, so far as it concerns him, and we are deprived of the Advantage, which Truth and Remorse once Extorted, and would have again extorted from him.

However, I would have been glad to have had all that ever this Wretch said, and would hope that by comparing of the several Stories, which he several times told, some light might have been gained, which is now wanted:

Particularly by the knowledge of what he said freely and voluntarily, when he was in good Humour, and before his rough Usuage, on his Return from Rome had frighted him; but I think we have the Evidence only of a few of the last Days of his Life, all the preceeding time is Blank. He under went frequent Examinations, but they were not, it seems, so maturely weighed and Digested, as to be thought worth the committing to Writing; but he is gone to his Place, and hath answered for what he hath said at another Tribanal. I desire not to disturb his Ashes, farther than what is necessary for my Defence.

Your Lordships will observe first, the Inconsistency of some part of the Charge. Secondly, the improbability of it. The Report takes Notice of three several periods, or Stages of Time? When by consequence of some Informations from the Regent, the Design did take Place; the first was, during the Election; the 2d was, the Kings going to Hanover; & third was, the breaking up of the Camp; there is not the least Hint as to the last of these three Designs, in any of the Papers, tho' in the Recital of the Bill it is mentioned as the third part of the Plot, and the most dettable Part of the Design, to lay violent Hands on his Majesty and his Royal Highness.

There is not the least colour of Proof, as to the first part of the Conspiracy which was to take Place at the Election; their only Reason for that, is from a Passage, where it is said that the present opportunity is elaps'd; that is, the Opportunity of the Election.

I shall recite the Passage, as it lyes in the intercepted Letter, and make some Reflections on it: Notwithstanding the opportunity is elaps'd, (says the Writer to Jackson) I agree with you, another may offer before the End of the Year tho' not perhaps every way so favourable.

The Committee suppose this Letter to be from Kelly, and dictated by me, and they suppose the words to refer to the time of the Election, and from those Suppositions infer that I knew something of it. On the contrary, I shall on the two first Suppositions, shew the Impossibility of it; if this was a Letter from me or from any other Person, dictated by me to the Pretender, I must write as in answer to some Letter sent from them to me, in repeating the Expression; and his Opinion in the Letter, must have been founded on Intelligence before received. This Intelligence, considering the Distance between London and Rome, must have been cummunicated two Months if not longer, before the Date of this Letter; if we go back 2 Months, and talk of the Election being elaps'd, it was not begun; consequently that Opportunity in the Letter could not possibly mean the Time of the Election; and if so, it is impossible that it should be a Letter to the Pretender, that can consist with the Charge of the Person's writing in April 1720.

If it be a Letter writ in good earnest, it appears they had given over all Thoughts at that Time; I agree with you says he, another may offer before the end of the Year; and yet, he finds some words in a Letter writ ten Days after, wherein under the Name of Jones, I am made to be deeply concerned in a Conspiracy,

How can this be consistent, if I writ and directed this Letter, and was engaged in the second part of the Conspiracy?

Both cannot be true, both may be false; and I hope I have satisfied your Lordships, that as I did not Dictate the one, so I was no ways concerned in the other.

Can any one believe, that under the sad Circumstance of being afflicted by the Death of my Wife, I should be concerned in an Affair of this dangerous Nature? Was that a Time to provide for a Stranger? And for a Man, unless under the Power of Prejudice, to believe such an improbability, or that I had such a conjecture: I forbear former Instances.

I shall now consider the Improbability, as well as Inconsistence of the Charge brought against me without positive Proof: You will allow me to answer the Indictment in the same Manner as it is laid.

Is it probable that if I were engaged in any such Design, no Foot-steps should be seen of any Correspondence I had with the late Duke of ORMOND, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and still have all the Regard that is consistent with my Duty to my King and Country?

Is it probable that I would chuse rather to engage in such Design with Mr: Dillon, a military Man I never saw, and with the Earl of Mar, whom I never conversed with except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretender several Years, & had a Pension abroad? Is this a Season for me to enter into Conferences with him about restoring the Pretender, and do this not by Messages but by Letters, not sent by Messengers but by the common Post? That by thus writing to him by the Post, I should advise him after the same Manner to write me, and by these Means furnish Opportunities, towards detecting the Persons and bring my self into Danger? How doth that consist with the Caution and Secrecy which are said to belong to me? Must not I ha' been rash to have laid my self open such a Manner? This is an inconsistent Scheme, the other a bold Assertion. Is it probable when attending the Sick Bed of my Wife, and expecting her Death, not daily but hourly, that I should enter into Negotiations of this kind?

There was no need of dispatching any of those three Letters merely to excuse my not Writing: The Circumstances of my Family had been a sufficient Apology, and more effectual.

Is it probable that when I was carrying on publick Buildings of various Kinds at Westminster and Bromley, consulting all the Books from the Westminster Foundation, engaging in a Correspondence with learned Men about settling an important Point of Divinity; that at that very Time I should be carrying on a Conspiracy? Those that entertain such thoughts without Reason, may also condemn me without Argument.

Is it probable that I should Meet and Consult in Order to carry on and forward this Correspondence with No-body, and No-where?

That I who always liv'd at Home, and (except at Dinner Time) never stirr'd out of my Chamber, receiv'd all Persons that visited me, and was deny'd to none, should have an Opportunity to be so engaged? And if I had, that none of my Domesticks and Friends should ever observe any Appearance of any such Thing? No Evidence among my Papers, tho' they were all seized at both my Houses, and confining all my Servants but one for about 11 Weeks, searching him twice in the Tower, and searching my self, nothing of Consequence appears, nor is there any one living Witness that charges me with any thing that is really true.

Is it probable that I should form and direct a Conspiracy, and carry it on with any Success, that am not used to Arms, which I am no more acquainted with, than with the Persons employ'd on those Occasions? My way of Life hath not led me to converse with such Men and such Matters, except on the Occasion of meeting in Parliament; but in a Council of War I never was. Have I yet in any Instance of my Life meddled remarkably out of my own Sphere, in Affairs foreign to my Business and Character? I might have been thought too active in my proper Station and Business; but I was never charged with War, nor any ways inform'd in the Art of it.

Is it probable that Persons concern'd in such Military Scheme, (if any such be) formed by Men of the Sword that apply to such Business, should be punished without any Proof?

And must I, whose Way of Life is set at the greatest Distance from such Persons, and from the very Suspicion of being concerned with them, suffer all the Pains and Penalties (short of Death) which the Parliament can inflict for a supposed of I know not what, and what I don't to this Day apprehend.

Here is a Plot of a Year or two standing to subvert the Government with an armed Force; an Invasion from Abroad; an Insurrection at Home, just when ripe for Execution, is discover'd; and Twelve Months after the Contrivance of this Scheme, no Consultation appears, no Men corresponding together, no Provisions of Money, Arms or Officers — not a Man in Arms — And yet the poor Bishop has done all this!

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Laver and Plunket carry on a treasonable Correspondence; they go to Rome and receive Directions from the Pretender himself to promote his Cause —— It does no where appear that the Bishop has the least Share in, or is any way privy to their Practises —— And yet the Bishop has done all! He is principally concerned in Forming, Directing, and Carrying on this detestable Conspiracy.

What could Tempt me to step thus out of my Way? Was it Ambition and a Desire of climbing into a higher Station in the Church? There is not a Man in my Office farther removed from this than I am. I have a hundred Times said, and sincerely resolved, I would have been nothing more than I was at a Time when I little thought of being any thing before, and I could give an Instance of this Kind if I thought proper.

Was Money my Aim! I always despis'd it, too much perhaps, considering what Occasion I am now like to have for it. For out of a poor Bishoprick of 500 *l. per Annum*, I have laid out no less than two Thousand Pounds, towards Repairs of the Church and Episcopal Palace; nor did I take one Shilling for Dilapidations. The rest of my little Income has been spent as is necessary, as I am Bishop. Nor do I repent of those Expences now, (tho' since my long Confinement I have not receiv'd the least, Part of the Income of my Deanry) not doubting in the least, but that God who hath liberally provided for me hitherto, will still do it, and on his good Providence I secure rely.

Was I influenc'd by any Dislike of the Establish'd Religion, and secretly inclin'd towards a Church of greater Pomp and Power? I have, my Lords ever since I knew what Popery was, oppos'd it, and the better I knew it, the more I dislik'd it.

I begun my Study in Divinity, when the Popish Controversy grew hot about that Immortal Book of *Tillotson's*, when he undertook the Defence of the Protestant Cause in general, and as such I esteem'd him above all.

You will pardon me, My Lords, if I mention one Thing.

Thirty Years ago, I writ in Defence of *Martin Luther*, and have Preach'd, and writ to that Purpose from my Infancy, and whatever happens to me, I will suffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material point of the Protestant Religion, as profess'd in the Church of England.

Once more: Can I be suppos'd to favour Arbitrary Power? The whole Tenor of my Life hath been otherwise: I was always a Friend of the Liberty of the Subject, and to the best of my Power constantly maintain'd it: I may have been thought mistaken in the Measures I took to support it.

It matters not by what Party I was call'd, so my Actions are uniform.

To return to the Point: The Charge brought against me in the Manner it is brought, is improbable: If I could be guilty of it, I must have acted under a Spirit of Infatuation; yet I have never been thought an Idiot or a Madman.

My Lords, as to the Pains and Penalties contain'd in this Bill, they are great and grievous, beyond Example in their Nature and Direction.

I am here, My Lords, and have been expecting an immediate Tryal. I have, my Lords, declin'd no Impeachment. The Correspondence, with the Earl of *Clarendon*, was made *Treason*, but with me 'tis only *Felony*. He was allow'd the Conversation of his Children, by the express Words of the Act: Mine are not so much as to write, so as to be sent to me.

What is most particular in my Case I will repeat distinctly, that my Reverend Brethren may hear it. I am render'd incapable of using or exercising eny Office, Function, Authority, or Power, Ecclesiastical not only in his Majesty's Dominions, but any where else: Very hard! That such Spiritual Power as is not deriv'd from Men, but God himself, should be taken from me!

And I am not only *depriv'd of all Offices, Dignities, and Benefices Ecclesiastical*, and for ever *banish'd the Realm*, but likewise precluded from the Benefit of Royal Clemency, and *made utterly incapable of any Pardon by his Majesty, his Heirs and Successors.*

My Lords, I insist on my *Innocence*; that I am not guilty; and if I am not proved so, your Lordships will thus judgde; if otherwise, I Perswade my self I shall find some Degree of Mercy.

You will not strip a Man of his Substance, and then send him where he cannot subsist; you will not send him among Strangers, and then hinder others from performing Humanity to him you will not give him less time to order his Affairs and depart the Kingdom, than the Bill hath taken in passing through both Houses.

The great Man I last mention'd, carry'd a great Fortune with him into Foreign Parts, and had the Languages; was well acquainted abroad: The Reverse of all this is my Case; I indeed am like him in nothing but his *Innocence*, and his Punishment: It is in no Man's Power to make us differ in the one, but 'tis your Lordships Power to make us differ widely in the other, & I hope your *Lordships* will do it.

But to sum up the Arguments: It hath been frequently observ'd, that the higher the *Crimes* are, the fuller the *Proofs* ought to be. Here is a Charge of High Treason brought against me, with no Evidence at all.

My Lords, pardon me, what is not Evidence at Law, can never be made so by any Power on Earth; for the Law that required the Evidence, is as much the Law of the Land, as that which declares the Crime.

It is equally unjust to declare any Proof legal, because of my Prosecution: As extraordinary would it be, to declare the Acts themselves, *ex post facto*.

Never was there a Charge of so high a Nature, and so weakly prov'd.

A Person dead, so that there is not an Opportunity to falsify him by contradicting him, a Charge not supported by any one Evidence, nor by any one Proof of any Thing that hath been writ or receiv'd by me, not even by any one criminal Word prov'd, to have been spoken by me; but by intercepted Letters and *Correspondence*, in which appears not the least Certainty.

Some of those Letters, shewn to *Persons*, with a Design to fasten something on them; others writ in *Cyphers*, and fictitious Names, throwing out dark and abstruse Hints of what *Persons* went by those Names, sometimes true and sometimes doubtful, and often false, who continue all the while Strangers to the whole Transaction, and never make the *Discovery*, till they feel and find it advancing it self towards them: My Lords, this is my Case, in short.

I have a hard Task to prove my Innocence: Shall I stand convicted before your Lordships on such an Evidence as this? The Hearsay of an Hearsay; a Party dead, and that deny'd what he said; by strange and obscure Passages, and fictitious Names in Letters, by the Conjectures of Decypherers, without any Opportunity given me of examining and looking into the Truth of their Decyphering; by the Depositions of Post Office Clerks about the Similitude of Hands; their Depositions made at distant Times, and without comparing any one of the Originals by a strange Interpretation of them; for nothing more, I am perswaded, can be made of the Arguments than what is call'd the intercepted Correspondence.

Shall I, my Lords, be deprived of all that is dear to me, and in the Circumstances I am in, scarce able to bear up and by such an Evidence as would not be admitted in any other Cause or any other Court; and would hardly affect a JEW in the Inquisition of Spain?

And shall it be receiv'd against a Bishop of this Church, and a Member of this House? God forbid. Give me Leave to make Mention of a Text in Holy Writ: *Against an Elder receive not an Accusation, but before two or three Witnesses.* It is not said, condemn him not upon any Accusation, &c. But receive it not; I am something more than an *Elder*, and shall an Accusation against me be countenanced, without any one Instance of Proof to support it?

This is not directly Matter of Ecclesiastical Constitution: There you read, One Witness should not rise up against an Elder; but here, at the Mouth of Two Witnesses, or Three Witnesses, shall the Matter be established: And as this Rule was translated in the State of the Church, People always thought fit to follow it.

Shall I be the first Bishop in this Church, condemn'd upon Conjecture, on fictitious Names and obscure Passages in Letters, instead of two or three Witnesses?

Will not others endeavour to make the same Precedent and desire the same Influence of it to succeeding Ages, and even concur in such an Act in order to render me incapable of using or exercising any Power or Authority, &c. Is this good Divinity or good Policy?

As to the Justice of the Legislature, in some Respects it hath a greater Power than the sovereign Legislature of the Universe for he can do nothing unjust. But tho' there are no limits

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to be ſat to a Parliament, yet they are generally thought to reſtrain themſelves, to guide their Proceedings in Criminal Caſes, according to the known Law.

The parliament may order a Criminal to be tortur'd, who can ſay they cannot? But they never did, nor never will, I hope; becauſe Torture, tho' uſed in other Countries, is not known here.

Is it not torturing to inflict Pains and Penalties on Perſons not ſuſpected of Guilt, nor plainly proved Guilty? It is not much unlike it. The Parliament may if they pleaſe, as well as upon the Bill of perpetual Impriſonments, upon a Bill of perpetual Exile, reſerve to the Crown a Power to determine the one as well as the other. They have ſo enacted it in the one Caſe, but they have not enacted it in the other. The Law knows nothing of ſuch abſolute perpetual Impriſonments.

The Law may, in like manner, condemn a Man on a charge of Accumulated and Conſtructive Treaſon. They did ſo in the Caſe of the great Lord STRAFFORD, and that by Accumulated and Conſtructive Proofs of Reaſon; that is, by ſuch Proofs ſo well interpreted, as plainly to communicate Light and Strength to each other, and ſo to have all Force, without the Formality of Evidence. Was ſuch Proof ever admitted by any one, to deprive his Fellow-Subject of his Fortune, of his Eſtate, his Friends and Country, and ſend him in his old Age without Language or Hope, without Employment to get the Neceſſaries of Life, to Starve! I ſay again, GOD forbid.

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or own to ſeem to violate their Conſtitution in any Degree, which they ought to preſerve againſt any Attempts whatſoever.

But where once ſuch extraordinary Steps as theſe are taken, and we depart from the fix'd Rules and Forms of Juſtice, and try untrodden Paths, no Man knows where this ſhall ſtop.

Tho' I am worthy of no Regard, tho' whatſoever is done to me, may, for that Reaſon, be look'd upon to be Juſt, yet your Lordſhips will have ſome Regard to your own laſting Intereſt, and that of Poſterity.

This is a Proceeding with which the Conſtitution is not acquainted, which, under the Pretence of ſupporting it, will at laſt effectually deſtroy it.

For God's Sake lay aſide theſe extraordinary Proceedings, ſet not up theſe new and dangerous Precedents; I for my Part will voluntarily and chearfully go into perpetual Baniſhment, and pleaſe my ſelf that I am, in ſome Meaſure, the occaſion of putting a Stop to ſuch Precedents, and doing ſome Good to my Country; and will live wherever I am, praying for its Proſperity; and do, with the Word of Father Paul to the State of Venice, ſay, ESTO PERPETUO. It is not my departing from it I am concern'd for; let me depart, and let my Country be fix'd upon the immoveable Foundation of Law and Juſtice, and ſtand for ever.

I have, my Lords, taken up much of your Lordſhips Time, yet I muſt beg your Attention a little longer.

Some Part of my Charge hath been diſprov'd by direct and full Evidence, particularly that of writing the Letters of the 20th of April, or that I knew who wrote them, which I utterly deny that I ever did, or as yet do know. Other Parts of the Charge there are, which are not capable of ſuch Diſproof, nor indeed require it; there I reſt. But my Lords, there is a Way allow'd of vindicating my ſelf: It is generally Negative; that is, by proteſting and declaring my Innocence to your Lordſhips, in the moſt deliberate, ſerious, and ſolemn Manner; and appealing to GOD the Searcher of Hearts, as to the Truth of what I ſay, as I do it in what follows. I am charg'd in the Report with directing a Correſpondence to Mr. Kelly; but I ſolemnly deny and aver, that I ever directly or indirectly ſaw a ſingle Line of any of their Letters, till I met with them in Print. Nor was the Contents of any of them communicated to me. I do in the next Place deny, that I was ever privy to any Memorial to be drawn up to be deliver'd to the Regent. Nor was I ever acquainted with any Attempt to be made on the King's going to HANOVER, or at the Time of the Election. Nor did I hear the leaſt Rumour of the Plot to take Place after the breaking up of the Camp, till ſome Time after Mr. Layer's Commitment. I do with the ſame Solemnity declare, that I never collected, remitted, receiv'd or ask'd any Money of any Man to facilitate theſe Deſigns; nor was I ever acquainted with, or had any Remittances whatſoever from any of thoſe Perſons. I never drew an Declaration, Minutes or Paper, in the Name of the Pretender, as is expreſly charg'd upon me. And that I never knew of any Commiſſion iſſued, Preparation of Arms, Officers or Soldiers, or the Methods taken to procure any, in order to raiſe an Inſurrection in theſe Kingdoms. All this I declare to be true, and will ſo declare to the laſt Gaſp of my Breath.

And I am ſure, the further your Lordſhips examine into this Affair, the more you will be convinced of my Innocency. Theſe contain all the Capital Articles of which I am accuſed in the Report of the Houſe of Commons.

Had the Charge been as fully prov'd as aſcertain'd, it had been vain to make Proteſtations of my Innocency, tho' never ſo ſolemn.

But as the Charge is only ſupported by the ſlighteſt Probabilities, and which cannot be diſprov'd in any Inſtance, without proving a Negative; allow the ſolemn Aſſeverations of a Man in Behalf of his own Innocence to have their due Weight, and I ask no more, than that they may have as much Influence with your Lordſhips as they have Truth.

If on any Account there ſhall ſtill be thought by your Lordſhips to be any ſeeming Strength in the Proofs againſt me; If by your Lordſhips Judgments, ſpringing from unknown Motives, I ſhall be thought to be Guilty: If for any Reaſons or Neceſſity of State, in the Wiſdom and Juſtice of which I am no competent Judge, if your Lordſhips ſhall proceed to paſs this Bill againſt me; God's Will be done.

" Naked came I out of my Mother's Womb, and Naked ſhall
" I return; and whether he gives or takes away, bleſſed be
" the Name of the Lord.

FINIS.